

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL DARREL MILAM,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO. C20-422 RSM

ORDER ADOPTING REPORT AND
RECOMMENDATIONS AND
DISMISSING THE ACTION

This matter is before the Court on several Reports and Recommendations (“R&R”) issued by the Honorable Brian A. Tsuchida, Chief United States Magistrate Judge. Dkts. #24, #28, and #29. Plaintiff has filed objections to two of the R&Rs. Dkts. #26 and #32. Following a party’s objections to R&Rs on dispositive motions, the Court “must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” FED. R. CIV. P. 72(b). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Having considered the R&Rs, Petitioner’s objections thereto, Respondent’s response to objections, and the remainder of the record, the Court finds and ORDERS:

1. The Court ADOPTS the Report and Recommendation RE: Summary Judgment (Dkt. #24).

- a. The Court overrules Petitioner's objection. Dkt. #26. Petitioner objected only to one line of the R&R. *See id.* at 2 ("The first page of the report and recommendation line 20# was not correct, and I never stated this lie."). Line 20 indicates that "the trial court imposed an unauthorized term of community custody on top of the prison DOSA sentence the Court ordered." Dkt. #24 at 1. Petitioner indicates that he alleges it was the Department of Corrections that unlawfully altered his state court judgment. Dkt. #26 at 1–2. That argument is contradicted by the record. *See* Dkt. #21-1 at 7–18 (state court judgment). Regardless, the fact does nothing to challenge the R&R's conclusion that Petitioner's "1983 Civil Rights Complaint Motion for Summary Judgment" (Dkt. #23) sought remedies that were not available under the allegations of his habeas petition and should therefore be denied. Dkt. #24 at 2–3.
 - b. Petitioner's motion for summary judgment (Dkt. #23) is DENIED.
2. The Court ADOPTS the Report and Recommendation Denying Second Motion for Summary Judgment.¹ Dkt. #28. Petitioner's second motion for summary judgment (Dkt. #27) is DENIED.
 3. The Court ADOPTS the Report and Recommendation (Dkt. #29) advising that the Court deny Petitioner a writ of habeas corpus and dismiss the matter.

- a. The Court overrules Petitioner's objection. Dkt. #32. Petitioner's objection seeks a stay to allow Petitioner to exhaust his state court remedies to "show to this court that the Defendant is not recognized as a U.S. citizen with Constitutional rights." *Id.* Regardless, the R&R recommended that Petitioner's federal habeas action be

¹ Petitioner did not object to the R&R denying his second motion for summary judgment.

1 dismissed for two reasons: (1) Petitioner's failure to exhaust state court remedies
2 and (2) the untimely filing—by nine years—of his petition. Dkt. #29 at 4–6.
3 Petitioner's objection and request for a stay also do not touch the R&R's further
4 recommendation that the Court should not excuse the untimeliness of Petitioner's
5 petition. *Id.* at 6.

6 b. Petitioner's habeas petition is DISMISSED.

7 c. The Court DENIES issuance of a Certificate of Appealability.

8 d. Petitioner's pending motions to amend the caption (Dkts. #18 and #25) are
9 DENIED as moot.

10 4. This matter is CLOSED.

11 5. The Clerk shall provide the parties with copies of this Order.

12 Dated this 31st day of July, 2020.

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15 RICARDO S. MARTINEZ
16 CHIEF UNITED STATES DISTRICT JUDGE
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